

Guidance on Determining Cultural Affiliation and Documentation Standards.

Determining Cultural Affiliation

- Cultural affiliation means a “relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.” (43 CFR10.14(c)).
- Criteria for determining cultural affiliation include:
 - o Existence of a present-day group
 - o Evidence of the existence of an identifiable earlier group
 - o Evidence of the existence of a shared group identity that can be reasonably traced between the present-day tribe and the earlier group.
- Finding of cultural affiliation is based on the overall evaluation of all available information showing a connection between the present-day group and the earlier group. Evidence can include:
 - o geographical
 - o kinship
 - o biological
 - o archeological
 - o anthropological
 - o linguistic
 - o folklore
 - o oral tradition
 - o historical
 - o or other relevant information or expert opinion.
- The standard of proof required for making a determination of cultural affiliation is “preponderance of evidence.” In the tier of standards for proof, preponderance of evidence basically means, evidence of greater weight or more convincing than the opposing evidence; evidence more credible and convincing, more reasonable and probable, and can be circumstantial in nature.

Standards for Decisions

Scientific Certainty
Beyond a Reasonable Doubt
Clear and Convincing
Preponderance of Evidence
Probable Cause
Reasonable Suspicion

Documentation Standards

A decision regarding the right of a tribe (or tribes) to custody of the cultural items is a final agency action under the Administrative Procedures Act. Interested parties have the right to review the agency's administrative record of decision. Therefore, any decision must be fully documented with a strong administrative record, showing that all available information was reviewed and considered with a supportable rationale for the decision.